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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE NATIONAL SECURITY AGENCY TELECOMMUNICATIONS RECORDS LITIGATION, MDL No. 1791 This Document Relates To: Hepting, et. al v. AT&T Corporation, et. al	MDL Docket No 06-1791 VRW Relates to Case No. C-06-0672-VRW **CLASS ACTION** **PLAINTIFFS' STATUS REPORT PURSUANT TO AUGUST 14, 2006 ORDER** Courtroom: 6, 17th Floor Judge: The Hon. Vaughn R. Walker

Dockets.Justia.com

Pursuant to the Court's Order of August 14, 2006 (C-06-0672-VRW Dkt. 336), plaintiffs provide the following:

A. Status of 28 USC § 1407 transfers pursuant to MDL 1791.

As this Court is aware, on August 10, 2006, the Judicial Panel on Multi-District Litigation transferred 17 cases docketed with the panel under MDL 1791 to this Court. According to the docket in MDL 06-1791-VRW, the Northern District Clerk's Office has received the case files in 14 of these actions, including *Hepting,* as of September 15, 2006. On August 31, 2006, the MDL panel conditionally transferred an additional 21 "tag-along" cases to this Court, subject to oppositions to transfer being filed with the panel by parties to those cases. Two of the transferred cases have since been dismissed (*Potter v. Bellsouth* (M.D. Tenn.) and *Tyler v. AT&T et. al* (D. Neb.)). Any notice of opposition to the transfer of a tag-along case must be filed with the MDL panel by September 15, 2006.

Two of the conditionally transferred tag-along cases are solely against the government and are not also brought against telecommunications companies. Those are *Al-Haramain Islamic Foundation v. Bush* (D. Ore.) and *CCR v. Bush* (S.D. N.Y.). *Al-Haramain* has been the subject of an Order by the District Court denying the government's motion on state secrets grounds to dismiss or, in the alternative, for summary judgment; the Court certified its order for interlocutory appeal pursuant to §1292(b). *Al-Haramain Islamic Foundation, Inc. v. Bush,* 2006 WL 2583425 (D. Ore. Sept. 7, 2006). The deadline for the government to petition for review by the 9th Circuit has not yet passed. The *CCR* case has been fully briefed and oral argument held on the government's motion to dismiss or in the alternative for summary judgment based upon the states secrets privilege and on a cross motion for summary judgment brought by the plaintiffs.

On September 12, 2006, Defendant AT&T notified the MDL panel that it considered five additional cases arising out of administrative subpoenas issued by Attorneys General and Public Utilities Commissioners in several states (New Jersey, Missouri (2 cases), Maine, Connecticut) to be potential tag-alongs in this litigation.

Plaintiffs' counsel for the transferred cases have been conferring and believe that they can present a Joint and Agreed Organization and Case Management Plan in advance of a case management conference set for a time at the court's earliest convenience. Unlike some multi-defendant MDL proceedings in which all defendants are alleged to have acted in concert, these cases involve numerous separate defendants who have each acted independently. The factual allegations of each case, and the legal consequences of those facts in light of the Court's July 20, 2006 Order (C-06-0672-VRW Dkt. #308), vary tremendously. Accordingly, plaintiffs anticipate that the MDL proceedings will best be managed by coordinating rather than consolidating all of the cases.

B. Interlocutory Appeal Petitions of the Government and AT&T

The 28 U.S.C. § 1292(b) interlocutory appeal petitions of the Government and AT&T, and the cross-petition of plaintiffs, are still pending before the 9^{th} Circuit. As of the date of this filing, no action has yet been taken on them.

C. Plaintiffs' Pending Motion For Preliminary Injunction

Plaintiffs filed their pending motion for a preliminary injunction on March 31, 2006, nearly six months ago (C-06-0672-VRW Dkt # 16). As the parties and the Court discussed at length during the hearing on August 8, 2006, plaintiffs seek to move forward with their pending preliminary injunction motion as quickly as possible. To that end, plaintiffs propose the following occur once the current stay expires on September 29, 2006:

First, the discovery previously noticed by plaintiffs in support of their preliminary injunction motion should go forward. To the extent that this discovery implicates the government's state secrets concerns, it should proceed under the procedures outlined by the Court in its July 20, 2006 Order, including appointment of a Court expert or consultant pursuant to F.R.E. 706 as discussed during the August 8, 2006 hearing, as well as under the processes outlined in 50 U.S.C. § 1806(f). To the extent that plaintiffs seek information that does not implicate state secret concerns (e.g., public statements by AT&T), discovery related to the injunction should go forward as it would in any other case.

Second, the Court should set a briefing schedule and early hearing date for plaintiffs' preliminary injunction motion. This briefing schedule should accommodate the discovery that plaintiffs seek in support of their motion and the filing of an answer by the AT&T defendants, with the answer also filed under the procedures discussed in the Court's July 20, 2006, Order and 50 U.S.C. § 1806(f).

DATED: September 15, 2006

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CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants listed on the following pages.

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